bined with the statutory provisions of the Road Traffic Ordinance 1958 in regard to the registration of ownership claim, would constitute such a distinctive local circumstance of the local inhabitants of West Malaysia that the decision of *Moorgate*[1] and other cases directly and indirectly on the point of failure to have an ownership claim registered should not be followed. We have to develop our own common law just like what Australia has been doing by directing our minds to the 'local circumstances' or 'local inhabitants'.

It remains for me to deal with certain connected specific points raised; out of deference to rather elaborate arguments on them, with which I was unable to agree however.

Learned counsel for Supreme submitted with reference to the proviso to s 27 of the Act, and learned counsel for UMBCF did not deem it fit to reply thereto, quite rightly in my opinion. It was submitted that the tractor dealer, being a mercantile agent, thus sold the Caterpillar and I suppose, validly. Bearing the words of the proviso in mind, it was never the case and there never was the evidence that the Caterpillar was in the first place left with the tractor dealer with the consent of UMBCF.

Learned counsel for UMBCF raised the point to the effect that his client's negligence, was not the proximate cause of the damage. (Please refer to his submission quoted above.) In my view, the damage, of course, should refer to the adverse claim of UMBCF against Supreme and the subsequent seizure of the Caterpillar. It would not be wrong to say that if there was an ownership claim registered or endorsed on the registration card, the tractor dealer would not have the gall or the legalistic cover to carry into effect a well-concealed fraud, for to do so in the face of the endorsement would result in an arrest and prosecution of its officers concerned, with the police not requiring at all any lengthy investigation. It is interesting to observe by way of comparison that in *Abigail* v *Lapin*,[12] a land case on appeal from Australia with which we all are familiar, the failure of Abigail to make a search for any caveat which Lapin in fact failed to lodge, did not stop their Lordships in the Privy Council when giving judgment for Abigail, from holding that the Lapins had neglected 'the well-known method of protecting their rights and interests by means of a caveat'.

For the reasons given above, the court gave judgment to Supreme (second plaintiff) and other persons claiming through it, viz the other plaintiffs with costs. The only regret the court had was having to give judgment against counsel who had prepared his case so exceptionally well.

Claim allowed.

Solicitors: *Maxwell Kenion Cowdy & Jones; Mah-Kok & Din.*

Reported by *PS Ranjan*

Hong Leong Finance Co Bhd lwn Lee Geng dan Satu Yang Lain

MAHKAMAH TINGGI (KUALA LUMPUR) — GUAMAN NO C7360 TAHUN 1985
ZAKARIA YATIM H
22 JUN 1990

Acara Sivil — Perintah pengkomitan — Penghinaan terhadap mahkamah — Perintah menghendaki defendan memberi maklumat mengenai 'whereabouts of documents, goods and accessories' — Perintah mempunyai maksud yang luas — Prinsip-prinsip undang-undang berkenaan dengan perintah pengkomitan — Kaedah-Kaedah Mahkamah Tinggi 1980, A 52 k 5(3)

Ini adalah satu permohonan daripada pihak plaintif memohon mahkamah membuat perintah supaya defendan pertama dikomitkan ke penjara sivil oleh kerana defendan pertama telah melakukan penghinaan terhadap mahkamah dengan melanggar perintah mahkamah. Defendan pertama telah diperintahkan oleh mahkamah untuk memberitahu pihak plaintif 'the whereabouts of the documents, goods and accessories mentioned below'. Defendan pertama telah menulis surat kepada peguam pihak plaintif yang menyatakan di mana terletaknya jentera-jentera dan dokumen sebagaimana yang diminta oleh pihak plaintif.

Diputuskan, menolak permohonan itu:

(1) Surat yang ditulis oleh defendan pertama telah pun mematuhi perintah mahkamah. Perintah itu hanya menghendaki defendan pertama memberi maklumat mengenai 'the whereabouts of the documents, goods and accessories'.

(2) Perkataan 'whereabouts' harus diberi makna yang biasa digunakan, yang terdapat dalam kamus. Disebabkan penggunaan perkataan 'whereabouts' dalam perintah tersebut, perintah itu tidak mengarahkan defendan pertama memberi maklumat dan tempat yang tepat. Perkataan yang digunakan dalam perintah itu luas maknanya dan kurang tepat.

(3) Perintah pengkomitan akan dibuat hanya kalau perintah mahkamah itu jelas dan tidak mempunyai makna yang kabur (clear and unambiguous). Perintah dalam kes ini adalah sah dan jelas tetapi terlalu luas maknanya.

[English summary

This is an application by the plaintiffs for an order of committal to commit the first defendant to prison for contempt of court. The first defendant had been ordered by an order of court to inform the plaintiffs of 'the whereabouts of the documents, goods and accessories mentioned below' and the plaintiffs allege that the first defendant had failed to comply with the order. The first defendant had sent a registered letter to the plaintiffs' solicitors stating where the machinery and douments are located.

Held, dismissing the application:

(1) The letter that had been written by the first defendant had complied with the order of court. The order had only directed the first defendant to give information on the 'whereabouts' of the documents and goods.

(2) The word 'whereabouts' should be given its plain and ordinary dictionary meaning — 'at what approximate location or place' or 'person's or thing's location roughly defined ...'. Because of the use of the word 'whereabouts', the order did not require the first defendant to give the precise location of the

documents and goods. The word 'whereabouts' has a wide meaning, and is imprecise.

(3) An order of committal can only be made if the terms of the order are clear and unambiguous. In this case, the terms of the order are wide, and the first defendant has complied with the order. An order of committal cannot be made in this case.]

Kes-kes rujukan
1 *MBf Holdings Bhd* v *Emtex Corp Bhd* [1986] 1 MLJ 477 (folld)
2 *Re Bramblevale Ltd* [1970] Ch 128 (folld)
3 *PA Thomas & Co & Ors* v *Mould & Ors* [1968] 2 QB 913 (refd)
4 *Iberian Trust Ltd* v *Founders Trust & Investment Co Ltd* [1932] 2 KB 87 (folld)

Undang-undang rujukan
Kaedah-Kaedah Mahkamah Tinggi A 52 k 5(3)

Lorraine Cheah bagi pihak plaintif.
KH Lee bagi pihak defendan pertama.

Cur Adv Vult

Zakaria Yatim H: Ini adalah satu permohonan daripada pihak plaintif dengan cara notis usul, memhon mahkamah membuat perintah supaya defendan pertama dikomitkan ke penjara sivil dan dipenjarakan sehingga satu perintah dibuat oleh mahkamah, oleh kerana defendan pertama telah melakukan penghinaan terhadap mahkamah dengan melanggar perintah mahkamah yang bertarikh 24 Mac 1987.

Permohonan ini dibuat di bawah A 52 k 5(3) Kaedah-Kaedah Mahkamah Tinggi 1980. Kaedah ini menyatakan:

> ... Kecuali dengan kebenaran Mahkamah yang mendengar permohonan bagi suatu perintah pengkomitan, tiada alasan boleh menjadi asas di pendengaran itu kecuali alasan-alasan yang dinyatakan dalam kenyataan di bawah kaedah 2.

Kaedah 2 pula menyatakan:

> (1) Tiada permohonan kepada Mahkamah minta suatu perintah pengkomitan terhadap mana-mana orang boleh dibuat melainkan jika kebenaran untuk membuat suatu permohonan yang sedemikian telah diberikan mengikut kaedah ini.
>
> (2) Suatu permohonan untuk kebenaran sedemikian mestilah dibuat secara ex parte kepada Mahkamah, kecuali jika Mahkamah bercuti di mana permohonan boleh dibuat kepada seorang Hakim dalam Kamar, dan mestilah disokong oleh suatu kenyataan yang menyatakan nama dan perihalan pemohon, nama, perihalan dan alamat orang yang diminta dikomitkan dan alasan-alasan yang berdasarkannya pengkomitan itu diminta dan melalui suatu afidavit hendaklah difailkan sebelum permohonan dibuat, menentusahkan fakta-fakta yang diasaskan padanya.

Satu permohonan di bawah k 2(2) telah pun dibuat dengan cara ex parte pada 13 Jun 1988. Mahkamah telah memberi kebenaran untuk membuat permohonan perintah pengkomitan. Satu kenyataan yang memberi alasan-alasan untuk pengkomitan tersebut seperti yang dikehendaki di bawah k 2(2) telahpun difailkan oleh plaintif pada 3 November 1987. Kenyataan itu, di antara lain menyatakan:

> The relief sought herein is an order that the first defendant be committed to civil prison for his contempt of this honourable court in failing to comply with the order of this court dated 24 March 1987.
>
> The grounds upon which the relief is sought is that the conduct of the defendant was intended to impede or prejudice the administration of justice in that he had wantonly failed and/or neglected to comply with or obey the order of court dated 24 March 1987 by failing and/or neglecting whether by himself, his servant, and/or agents to inform the plaintiff of the whereabouts of the equipment, goods and/or accessories.

Seperti yang tersebut dalam kenyataan di atas, pihak plaintif menyatakan bahawa defendan pertama telah melanggar perintah mahkamah yang bertarikh 24 Mac 1987. Sekarang, mahkamah perlu melihat apa yang tertulis dalam perintah tersebut. Perintah itu, di antara lain, menyatakan:

> It is ordered as follows:
>
> That the defendants whether by themselves, their servants or agents do forthwith inform the plaintiffs of the whereabouts of the documents, goods and accessories mentioned below.

Seterusnya perintah itu menyatakan butir-butir lanjut berkenaan dengan jentera-jentera, buku-buku pendaftaran dan surat polisi insuran yang harus diberitahu oleh pihak defendan kepada plaintif. Perintah itu tidak menyatakan jangkamasa yang diberi kepada pihak defendan pertama untuk memberikan maklumat-maklumat tersebut tetapi pihak defendan dikehendaki memberi maklumat-maklumat tersebut dengan serta-merta.

Pada 17 Jun 1987, defendan pertama telah menulis surat yang berdaftar kepada peguam pihak plaintif. Kandungan surat itu adalah seperti berikut:

> Dear Sirs,
>
> Re Suit No C7360 of 1985 Hong Leong Finance
>
> Refer to your order regarding the location and other details, we give the following information:
>
> A All the machines and attachments are in the logging site of Kuala Brang, Terengganu.
> B We enclose copies of the insurance cover notes and insurance policies.
> C With regards to the registration cards, DEP arranged all the finance for us and also to get the registration cards so please refer to them. There is no registration for the winches and logfork.
>
> Yours faithfully,
> Sgd
> Syarikat Eng Seng

Pada pendapat saya surat yang tersebut di atas telah pun mematuhi perintah mahkamah yang bertarikh 24 Mac 1987. Perintah itu, jika dilihat dengan teliti hanya menghendaki defendan pertama memberi maklumat mengenai 'the whereabouts of the documents, goods and accessories'. Saya tegaskan di sini perkataan 'whereabouts'.

Di dalam kes *MBf Holdings Bhd* v *Emtex Corp Bhd*,[1] Mahkamah Agung telah mentafsirkan peruntukkan dalam Akta Securities and Industries 1983 dengan menggunakan perkataan yang biasa digunakan. Mohamed Azmi SCJ (di ms 480-481) berkata:

> We agree with Encik Ismail's concession, and we think there is a clear distinction between the two words. In our view, the plain and ordinary dictionary meaning of the word should be applied.

Pada pendapat saya, apa yang dinyatakan oleh Hakim Mohamed Azmi itu terpakai dalam kes ini. *Collins English Dictionary* memberi definisi perkataan 'whereabouts' sebagai 'at what approximate location or place' dan menurut *The Concise Oxford Dictionary* (Edisi Ke-7), ms 1225, perkataan 'whereabouts' itu diberi takrif iaitu 'person's or thing's location roughly defined ...'.

Maka, disebabkan penggunaan perkataan 'whereabouts' dalam perintah tersebut, perintah itu tidak mengarahkan defendan pertama memberi maklumat dan tempat yang tepat atau tempat yang tepat di mana jentera-jentera dan surat-surat itu tersimpan. Sebaliknya, perkataan yang digunakan dalam perintah itu adalah luas maknanya, dan kurang tepat. Oleh yang demikian, pihak defendan pertama tidak boleh disalahkan kerana menjawab surat seperti yang dipetik di atas.

Di sini, mahkamah perlu melihat prinsip-prinsip undang-undang berkenaan dengan permohonan untuk perintah komital.

Halsbury's Laws of England (4th Ed) di ms 36 menyatakan:

> Power of court to punish by committal or sequestration. The power to order committal for civil contempt is a power to be exercised with great care. The Court will only punish disobedience to an order of the court, or non-compliance with an undertaking, if satisfied that the terms of the order or undertaking are clear and unambiguous, that the defendant has proper notice of the terms and that a breach of the order or undertaking has been proved beyond reasonable doubt.

Di dalam kes *Re Bramblevale Ltd*,[2] Lord Denning MR di ms 137 telah menyatakan:

> A contempt of court is an offence of a criminal character. Any man may be sent to prison for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt.

Saya ingin menyebut satu lagi kes yang dirujuk oleh Encik Lee iaitu kes *PA Thomas & Co & Ors* v *Mould & Ors*.[3] Encik Lee telah membaca satu petikan dari ms 917. Setelah membaca kes ini dengan teliti, saya mendapati bahawa petikan itu merupakan hujah pihak peguam, bukanlah penghakiman di dalam kes itu. Penghakiman mahkamah dalam kes itu di ms 923 menyatakan:

> ... In the present case the court has granted the injunction in the terms prayed by the plaintiffs. That is the plaintiffs' own doing. If they wish not to trust the court and its procedure for protecting their legitimate interests by disguising the true nature of their 'know-how' in the form which has been done in the present case, they cannot complain if at a later stage they are met with the answer with which they have been met here, of saying: 'You are alleging a breach of the injunction: you have done thus and so, thus and so, and thus and so,' and then invite the court to draw the inference that because it is different from that which was set out in statements sworn to by the plaintiffs it must be confidential material — part of the 'know-how', part of the material, upon which the injunction bites.
>
> I am not prepared to say that that has been established here. It may well be so. It may be that these inferences can be drawn on all kinds of balances of probabilities at the end of the day when this case is tried. But where parties seek to invoke the power of the court to commit people to prison and deprive them of their liberty, there has got to be quite clear certainty about it. I see no such certainty in the present case and I am not prepared to give any relief to the plaintiffs on this motion: it must be dismissed.

Kes di atas ialah satu kes yang berkaitan dengan permohonan untuk perintah supaya defendan dikomitkan kerana melanggar perintah injunksi. Hakim O'Connor, di ms 919 berkata: 'It would be seen that the injunction was wide in terms.'

Peguam dalam kes *PA Thomas*[3] telah merujuk kepada kes *Iberian Trust Ltd* v *Founders Trust and Investment Co Ltd*.[4] Hakim Luxmore, di dalam penghakimannya dalam kes itu di ms 95 telah berkata: 'If the court is to punish any one for not carrying out its order the order must in unambiguous terms direct what is to be done.'

Setelah membincangkan kes-kes di atas, saya berpendapat bahawa makna kandungan perintah yang berkaitan dengan kes ini, iaitu 'the whereabouts of the documents' adalah luas maknanya. Jika perintah itu mempunyai maksud yang luas atau menggunakan 'wide terms', mengikut kes *PA Thomas*,[3] perintah untuk komital tidak boleh dibuat oleh mahkamah. Perintah itu hendaklah jelas dan tepat. Saya berpendapat bahawa perintah dalam kes ini adalah sah dan jelas tetapi terlalu luas maknanya. Pihak defendan telahpun mematuhi perintah itu.

Cik Cheah, peguam bagi plaintif telah merujuk kepada afidavit pihak defendan yang diikrarkan pada 26 Mei 1990 dan yang telah dihantar oleh peguam mewakili defendan kepada peguam pihak plaintif. Afidavit itu telah melampirkan satu surat yang ditulis oleh defendan pada 23 Mac 1990 (surat kedua). Menurut Cik Cheah, dalam surat itu, defendan telah menyatakan bahawa jentera-jentera tersebut telah digunakan oleh seorang yang bernama Gan Lai Huat dan bukan DEP seperti yang dinyatakan sebelumnya. Cik Cheah menyatakan bahawa kini, iaitu enam tahun selepas perintah mahkamah dibuat, defendan pertama telah mengubah kedudukannya. Saya telah mengkaji surat itu dan mendapati bahawa ia tidak bertentangan dengan surat defendan pertama yang bertarikh 17 Jun 1987. Dalam surat kedua itu, defendan pertama telah menegaskan sekali lagi apa yang dinyatakan olehnya dalam surat pertama

dahulu. Saya petik perenggan 3 and 4 dalam surat yang kedua itu:

> The equipment was in fact delivered to the work site in Kuala Brang to Gai Nge Huat by DEP Trading (M) Sdn Bhd on behalf of Syarikat Eng Seng. The payments received from Gai Nge Huat for the use of the equipment were paid directly to the aforesaid DEP Trading (M) Sdn Bhd who then forwarded the said payments to your clients.
>
> Our client thereafter made numerous attempts to locate the equipment and in fact went to the work site with personnel of DEP Trading (M) Sdn Bhd but was unable to trace the equipment or the aforesaid Gai Nge Huat.
>
> Our client has used his best endeavours to locate the equipment but to date has been unable to do so.

Pada pendapat saya surat itu tidak bercanggah dengan surat pertama.

Setelah menimbangkan prinsip undang-undang mengenai perkara ini dan setelah menimbangkan keterangan-keterangan yang terkandung dalam afidavit-afidavit dan dokumen-dokumen dalam kes ini, saya berpendapat bahawa ini bukanlah satu kes di mana mahkamah, dengan menggunakan budibicaranya, boleh membuat perintah pengkomitan ke atas pihak defendan pertama atas sebab penghinaan mahkamah.

Oleh yang demikian, saya menolak permohonan plaintif dengan kos.

Permohonan ditolak.

Peguamcara: *Lee Kee Huat & Associates*; *Shearn Delamore & Co.*

Dilapurkan oleh *Zarinah Marican*

Chee Hock Lai v Tan Swee Thai & Ors

HIGH COURT (IPOH) —CIVIL SUIT NO 884 OF 1983
ABDUL MALEK J
15 JUNE 1990

Land Law — Sale and purchase of land — Purchaser in possession — Whether purchaser has equitable title — Limitation period to claim transfer of legal title

Civil Procedure — Limitation — Purchaser of land in possession — When limitation period commences — Equitable title to land — Approval of court required in agreement — Whether there was a breach of agreement — Whether limitation period commenced

Succession — Probate and administration — Administrator transferred title to beneficiaries against the terms of agreement — Whether administrator has power to enter into agreement/action without approval of court — Probate and Administration Act 1959, ss 60 & 71

The plaintiff is the administrator of the estate of CS who bought the land in question from the first defendant, who is the administrator of the estate of WL, the owner of the land. By an agreement of 3 June 1949 the first defendant had agreed to sell the land for $280 and also agreed to obtain a court order to transfer the land to CS. Vacant possession was given to CS who paid the price and had occupied the land until his death. Thereafter the plaintiff and his relations continued to occupy the land and paid all expenses with the knowledge and consent of all the defendants.

Despite several efforts to get the first defendant to transfer the land to CS during his lifetime, and to the plaintiff after CS's death, the first defendant had failed to do so. In fact the first defendant transferred the land to herself and her six children on 1 April 1963 as a result of her marriage to WL. The defendants raised a preliminary argument, alleging that the limitation period in this particular case was 12 years which should commence on 1 April 1963, the date of the transfer.

Held, allowing the plaintiff's claim and dismissing the defendants' counterclaim:

(1) A purchaser of land who has entered and occupied it without getting the title is regarded as someone having an equitable title. There are facts sufficient to determine that CS and subsequently the plaintiff had actually from the date of agreement occupied the land equitably. In this particular case what was important was the date of the breach of the agreement. The breach could only take place via cl 4 of the agreement which stated that the vendor was compelled to return the purchase price of the land and an additional equivalent amount together with all other expenses of the purchaser in improving the land if and only if the vendor failed to transfer the said land after getting the approval of court. The approval has yet to be obtained and the question of the refusal by the vendor to transfer the said land has not arisen. As such the limitation period is not an issue. The claim was made by the plaintiff only when the defendants objected to the erection of a house on the land in 1983. The delay in the claim was justified as there were no strong objections from the first defendant previously and the plaintiff had obtained an equitable title.

(2) Sections 60 and 71 of the Probate and Administration Act 1959 clearly state that when an administrator of an estate takes action without getting the approval of the court, the said action or any agreement made does not become null and void on